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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5257

LOU BERTHA LABINE, Natural Tutrix of Minor Child

RITA NELL VINCENT,

Appellant,

—against—

SIMON VINCENT, Administrator of the Succession of

EZRA VINCENT,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

MOTION FOR LEAVE TO FILE BRIEF, *AMICUS CURIAE*, AND BRIEF OF CENTER ON SOCIAL WELFARE POLICY AND LAW, *AMICUS CURIAE*

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RITA NELL VINCENT,

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—against—

SIMON VINCENT, Administrator of the Succession of
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Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

**MOTION OF COLUMBIA CENTER ON SOCIAL
WELFARE POLICY AND LAW FOR LEAVE
TO FILE BRIEF, *AMICUS CURIAE***

Pursuant to Rule 42(3) of the Rules of this Court, the Columbia Center on Social Welfare Policy and Law respectfully moves for leave to file a brief *amicus curiae* in the above-entitled case. The attorney for appellant has consented to the filing of this brief.* The attorney for appellee refused consent.

The Columbia Center on Social Welfare Policy and Law is funded by the Office of Economic Opportunity, and is associated with the Columbia University School of Law. The Center provides assistance in research and litigation for legal services and other attorneys serving the poor.

* The letter of consent accompanies this brief.

The Center has appeared before this Court in *Goldberg v. Kelly*, 397 U.S. 254 (1970), *Rosado v. Wyman*, 397 U.S. 397 (1970) and *Wyman v. James*, 397 U.S. 904 (1970), and has submitted briefs *amicus curiae* in *King v. Smith*, 392 U.S. 309 (1968); *Shapiro v. Thompson*, 394 U.S. 618 (1969); *Simmons v. Housing Authority of West Haven*, 399 U.S. 510 (1970); *Boddie v. Connecticut*, 395 U.S. 974 (1969); *Sanks v. Georgia*, 395 U.S. 974 (1969); *Wheeler v. Montgomery*, 397 U.S. 280 (1970); and *Dandridge v. Williams*, 397 U.S. 471 (1970).

Approximately one third of the poor are illegitimate and subject to the many social and legal disabilities attendant on this status. This case challenges the constitutionality of a state law which denies the illegitimate child the right to inherit from her natural father. We believe that this brief will be of substantial assistance to the Court in dealing with the important question raised by this case, the answer to which has broad implications for the social and economic rights of the indigent.

Respectfully submitted,

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**BRIEF OF THE COLUMBIA CENTER FOR
SOCIAL WELFARE POLICY AND LAW**

Interest of *Amicus Curiae*

The interest of *amicus curiae* is set out in the Motion for
Leave to File, *supra*.

Question Presented

Do the Louisiana laws which deprive an illegitimate child, acknowledged by her father, of the right to inherit in intestacy from him violate the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution?

Statement of the Case

Rita Nell Vincent is a destitute Negro child who was born out of wedlock. Ezra Vincent, her father, acknowledged the child as his own by notarial act, pursuant to Louisiana law. Ezra Vincent died intestate, leaving no legitimate descendants, and survived only by his illegitimate daughter and some collateral relatives. The Louisiana court below held that the acknowledged illegitimate child was not entitled to inherit from her father and was not entitled to support from his estate.

ARGUMENT

I.

The discrimination against the illegitimate child in this case violates the equal protection and due process clauses of the United States Constitution because it furthers no valid state purpose and deprives the child of rights based on a status over which she has no control.

The Louisiana statutes on intestate distribution create different classes of children, based on the marital status of the children's parents.¹ Children fortunate enough to have both parents married to each other are entitled to inherit in intestacy from their father.² Children whose parents by choice or circumstance are not married are denied any right to share in their father's estate, regardless of their

¹ Children may be either legitimate, illegitimate or legitimated. In addition there are subclasses of illegitimate children who are born to persons who could not legally marry: "adulterous bastards" and "incestuous bastards." Louisiana Civil Code of 1870, Articles 178-183. If the father is unknown, the children are merely "bastards," Civil Code, Article 202.

² Civil Code, Articles 886, 902.

relationship to their father, their father's intention, or any other consideration.³

The appellant here, like numerous other Negro and poor children, is a member of the class of children whose parents did not marry. Despite the fact that she was acknowledged by her father and there are no other descendants except for some collateral relations, she is excluded from any share of her father's estate by Louisiana law.

"When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated," *Hernandez v. Texas*, 347 U.S. 475, 478 (1954). While the states have wide discretion to make classifications for economic legislation, *Williamson v. Lee Optical Co.*, 348 U.S. 483 (1955), this Court has long viewed with suspicion classifications which encroach on basic civil rights, *Loving v. Virginia*, 388 U.S. 1 (1967), *Skinner v. Oklahoma*, 316 U.S. 535 (1942), and those which establish classifications based on race or ancestry, *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966). A classification based on legitimacy affects one of the most basic of rights, the right to a legal relationship to one's family, cf. *Armstrong v. Manzo*, 380 U.S. 545 (1965); it is by its very nature a suspect classification.

Moreover, such a classification, based as it is on status of birth, is closely analogous to discriminations based on race and ancestry which are "constitutionally suspect," *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954), and "subject . . . to the most rigid scrutiny," *Korematsu v. United*

³ Civil Code, Article 206.

States, 323 U.S. 214, 216 (1944). As this Court said in *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943), "distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality."

Discrimination against illegitimates solely because of their illegitimacy punishes appellant for an act over which she had no control. The results of such classification are severe emotional and social disabilities,⁴ comparable to the effects of race prejudice.⁵ It is constitutionally impermissible for states to deny persons rights on the basis of a condition which they did not create and over which they have no control, *Robinson v. California*, 370 U.S. 660 (1962); *Powell v. Texas*, 392 U.S. 514 (1968). As this Court stated in *Levy v. Louisiana*, "it is invidious to discriminate against [the illegitimate children] when no action, conduct, or demeanor of theirs is possibly relevant to the harm that was done the Mother," 391 U.S. 68, 72 (1968). It is similarly invidious to discriminate against the appellant here, or any illegitimate children, solely because of their status as illegitimates. As the Court asked rhetorically in *Levy*, "why should the illegitimate child be denied rights merely because of his birth out of wedlock," *id.* at 71.

For these reasons the state should be required to show "compelling justification," *Oyama v. California*, 332 U.S.

⁴ Fodor, *Emotional Trauma Resulting from Illegitimate Birth*, 54 ARCHIVES OF NEUROLOGY AND PSYCHIATRY 381 (1945).

⁵ Jenkins, *An Experimental Study of the Relationship of Legitimate and Illegitimate Birth Status to School and Personal and Social Adjustment of Negro Children*, 64 AM. J. SOCIOLOGY 169 (1958).

633, 640 (1948), for its classification, but here there is not only no such compelling justification, there does not even seem to be any rational basis for the classification.

The Louisiana Court below suggested that excluding illegitimate children from the right to inherit in intestacy from their fathers promotes the cause of family unity by "encouraging marriage and the legitimization of children."⁶ It is highly questionable whether this state policy underlies the statute in question here, since the statutory scheme does allow an illegitimate child to inherit if his father acknowledges him with a statement of intention that he inherit, or if there are no other claimants to the estate. If family unity is the policy here, it is a policy which the state pursues inconsistently and erratically. Imposing disabilities on the children of unmarried parents is an inappropriate method to encourage marriage; the children are the only ones affected by the disability and they are not usually in a position to force their parents to marry. If family unity and marriage is the goal there are direct ways for the state to encourage this without punishing the illegitimate child for his status. For example the state could provide incentives for marriage. Many states such as Louisiana provide only disincentives to marriage by the poor, in the form of welfare arrangements which penalize family unity⁷ and in the unavailability of legal aid for divorce and legitimization procedures.

The Louisiana court below also suggested that disabilities imposed on illegitimate children discourage illegiti-

⁶ *Succession of Vincent*, 229 So. 2d 449, 454 (1969).

⁷ Children are eligible for assistance only if one parent is not in the home, 46 La. Stats. Ann. §231 (1966). No provision is made for children living with both parents, even if the parents earn less than they would be eligible to receive on public assistance.

macy.⁸ Statistics and common sense, however, indicate that the denial of equal rights to illegitimate children does not deter the conduct which results in these births. People contemplating sexual intercourse probably do not have intestacy statutes on their minds. Despite sanctions, the number of illegitimate births increases in Louisiana each year.⁹ And in any case it would be improper for a state to deal with immorality and illegitimacy by punishing dependent children, *King v. Smith*, 392 U.S. 309 (1968).

Other possible rationales for discrimination against illegitimate children by preventing them from inheriting in intestacy are similarly lacking. It may be argued that the Louisiana statute attempts to transfer the deceased's property in the way he would have wished if he had expressed himself. This argument rests on the questionable assumption that parents wish to exclude their illegitimate children from sharing in their estates. A deceased's real intentions are speculative in any case, and particularly speculative in this case in which the father formally acknowledged the child. Furthermore, there were no legitimate descendants except some collateral relations who did not know the deceased. The estate plans in intestacy are drawn by the state, which should not be permitted to presume discriminatory intentions, *Shelley v. Kraemer*, 334 U.S. 1 (1948), particularly since the deceased could have excluded illegitimate children by will. Moreover in intestacy the law is attempting to distribute the estate not only in accord-

⁸ *Succession of Vincent*, 229 So. 2d 449, 452.

⁹ Note, *The Status of Illegitimates in Louisiana*, 16 LOYOLA L. REV. 87, 114 (1969). See also *Trends in Illegitimacy in the United States 1940-1965*, National Center for Health Statistics, Series 21, No. 15 (February, 1968). Interestingly Louisiana has more illegitimate births than states with fewer sanctions against illegitimacy.

ance with the intent of the deceased, but in a way which society deems fair. If fairness is the criterion, there can be no basis for the exclusion of the illegitimate child here.

The facts of this case demonstrate that excluding illegitimate children does not necessarily lead to ease in administration of intestate estates. Here the child had uncontroverted proof of paternity, and it was the collateral claimants who had to struggle through elaborate proceedings to prove their relationship to the deceased. The possibility of an increase in false claims by allowing illegitimates to inherit should not affect the substantial constitutional rights at stake here, since the states can adequately deal with this problem by appropriate statutes of limitations and proper allocation of the burden of proof, *Glonn v. American Guarantee & Liability Ins. Co.*, 391 U.S. 73, 76 (1968). Even if a governmental purpose is legitimate and substantial, that purpose cannot be pursued by means that broadly infringe upon basic rights, when there are available less drastic means for achieving the same ends, *Shelton v. Tucker*, 364 U.S. 479 (1960).

II.

Allowing the illegitimate child in this case to inherit would be consistent with the current legislative and judicial tendency to remove common law disabilities of illegitimate children.

The harsh common law doctrine that the illegitimate child is *filius nullius*, who can inherit from no one, has been considerably softened in recent years.¹⁰ In 1965 New York changed its law¹¹ to allow illegitimate children to inherit from their mothers on an equal basis as legitimate children. Now only Louisiana denies illegitimate children equal rights of inheritance from the mother. Eighteen states allow acknowledged illegitimate children to inherit from their fathers, though the burden of acknowledgment varies somewhat from state to state.¹² Three states grant equal rights of inheritance from the father regardless of

¹⁰ Note, *Illegitimacy*, 26 BROOKLYN L. REV. 45 (1961), which contains a survey of the inheritance laws in all 50 states. See also Gray and Rudovsky, *The Court Acknowledges the Illegitimate: Levy v. Louisiana and Glona v. American Guarantec & Liability Insurance Co.*, 118 U. PA. L. REV. 1 (1969).

¹¹ New York Estates Powers and Trusts Law §4.12(a)(1) (McKinneys 1967).

¹² Calif. Prob. Code §255 (1961); Colo. Rev. Stats. §153-2-8 (1963); Fla. Stats. Ann. §731-29 (1964); Idaho Code §14-104 (1948); Ind. Stats. §6-207 (1965) [adjudication of paternity required]; Iowa Code Ann. §633.222 (1964); Kans. Stats. Ann. §59-501 (1964); Minn. Stats. Ann. §525.172 (1969); Mont. Rev. Code §91-404 (1947); Neb. Rev. Stats. §30-109 (1964); Nev. Rev. Stats. §134.170 (1967); N.M. Stats. Ann. §29-1-18 (1953); N.Y.E. P.T.L. §4 (1967); Okla. Stats. Ann. tit. 84, §215 (1970); S.D. Comp. Laws tit. 29-1-15 (1967); Utah Code Ann. §74-4-10 (1953); Wash. Rev. Code §11-04-080 (1951); Wisc. Stats. Ann. §237.06 (1957).

acknowledgment.¹³ Only four states expressly provide that the illegitimate child may not inherit from his father.¹⁴ The legislatures of the other 26 states have not passed on the issue. In 1969, the National Conference of Commissioners on Uniform State Laws approved the Uniform Probate Code, giving illegitimate children the right to inherit in intestacy from their fathers, if paternity is established by an adjudication before the father's death or afterwards by "clear and convincing proof." The trend is plainly toward extension of inheritance rights to illegitimate children.

In recent years illegitimate children have also had their rights under federal welfare legislation expanded.¹⁵ For example, in 1965 the Social Security Act (which had previously required reference to intestate succession laws) was amended to provide for payments to the illegitimate children of insured fathers upon "satisfactory" proof of paternity and actual dependency.¹⁶ Illegitimates are also entitled to recover under the Veterans' Benefits Act, 38 U.S.C. §101(4) (1964) when there is satisfactory proof of paternity. Under the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1427 (1927), as amended 33 U.S.C. §902 (1964), recovery is allowed by illegitimate

¹³ Arizona Rev. Stat. §14-206(A) (1956); North Dakota Cent. Code §56-01.05 (1969); Oregon Rev. Stat. §§111.231, 109.060 (1957).

¹⁴ Ga. Code Ann. tit. 113, §§904, 905 (1935); Hawaii Rev. Stats. §§577-14 (1968); Ky. Rev. Stats. §391.090 (1969); Pa. Stats. Ann. tit. 20, §1.7 (1950).

¹⁵ See, generally, Comment, *Illegitimates: Definition of Children Under Federal Welfare Legislation*, 67 COLUMBIA L. REV. 984 (1967).

¹⁶ Social Security Act, 42 U.S.C. §416(h)(3) (1965).

children who are acknowledged by and dependent upon the deceased.¹⁷

Similarly, the right of illegitimate children to support from their fathers has been expanded in recent years. Now most states provide for such support,¹⁸ and the Courts which have ruled on the question have generally held that such support is required, *R. v. R.*, 431 S.W. 2d 152 (Mo. 1968); *Storm v. None*, 57 Misc. 2d 342, 291 N.Y.S.2d 515 (N.Y. County Family Ct. 1968); *Munn v. Munn*, — Colo. —, 450 P. 2d 68 (1969).

These developments indicate an increasing awareness that most discrimination against illegitimates is based on old and now discredited prejudice and that such discrimination should not continue to exist.

¹⁷ In a number of different situations, federal courts have allowed illegitimate children to receive federal life insurance benefits payable to "children," despite the existence of state intestacy laws which would exclude such children from sharing the estate of the deceased, *Metropolitan Life Insurance Co. v. Thompson*, 368 F. 2d 791 (3rd Cir. 1966); *Middleton v. Luckenbach Steamship Co.*, 70 F.2d 326 (2d Cir.), cert. denied, 293 U.S. 577 (1934); *Huber v. Baltimore and Ohio R.R.*, 241 F. Supp. 646, 650 (D. Md. 1965); *Hammond v. Pennsylvania R.R.*, 31 N.J. 244, 156 A.2d 689 (1959).

¹⁸ Krause, *Equal Protection for the Illegitimate*, 65 MICH. L. REV. 477, 478 (1967).

CONCLUSION

For the reasons stated above, the judgment below should be reversed.

Respectfully submitted,

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